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THE following committee has been appointed by the Council of the Harvard Law School Association to award the prize offered for the best essay: Louis D. Brandeis, LL.B., '77; Abbott Lawrence Lowell, LL.B., '80; Winthrop H. Wade, LL.B., '84.

THE popular notion that the only thing necessary for the breaking of a will is a contest, does not seem well founded in the light of the experience of the Surrogate Court of New York City. Of seven thousand wills probated in that court in the last six years, less than four hundred were contested, and of these but fifty were broken.

A CURIOUS point came up recently in Massachusetts in the celebrated case of *Stogdale* v. *Baker*, in which the defendant was sued for malpractice. On the fourth trial, before entering on the examination of witnesses, the counsel for the defence moved that the plaintiff should file a bond, with proper securities, for the payment of all the costs of the trial suit, in all the four trials, if, in this trial, the jury rendered a verdict for the defendant. The Court granted the motion. The verdict was subsequently given for the defendant.

IN the report of the Treasurer of the Association, the names of the contributors to the fund for increasing the instruction in Constitutional Law are given as follows: James C. Carter, Esq., of New York, $500; William G. Russell, Esq., of Boston, $100; George O. Shattuck, Esq., of Boston, $100; John Lowell, Esq., of Boston, $100; George Putnam, Esq., of Boston, $50; William Minot, Jr., Esq., of Boston, $25; Robert M. Morse, Jr., Esq., of Boston, $25; James J. Storrow, Esq., of Boston, $50; A. Lawrence Lowell, Esq., of Boston, $25; Arthur L. Huntington, Esq., of Salem, Mass., $25.

THE case of *Foster* v. *Wheeler*, 36 Ch. D. 695, raises the question of the effect of a contract to enter into a contract. Mr. Justice Kekewich says he has examined a number of the definitions of contract in the books, among them an American, Mr. Parsons, and settles on the one given by Mr. Pollock as the most satisfactory. His definition is "an act in the law whereby two or more persons declare their consent as to any

act or thing to be done or forborne by some or one of those persons for the use of the others or other of them." Taking "an act in the law" to be a matter "capable of having legal effect and concerned with rights and duties which can be dealt with by a court of justice," the learned justice concludes that an agreement between A and B to enter into a contract at some future time is not a contract; but that an agreement by A with B that he will make a contract (as for a lease of land in this case) with C, is a contract in law that may be enforced. Specific performance not being asked for at the trial, he gives damages to the plaintiff.

Lord Cairns' Act, 1858, first gave the right to assess damages to the Court of Chancery, but limited it to cases in which the Court had jurisdiction to grant specific performance. The Judicature Acts, 1873, took away this limitation by providing that the High Court and the Court of Appeal shall give all remedies that seem just either upon a legal or equitable claim properly before them under the Acts.

See Fry on Specific Performance, second edition, p. 552.

A RECENT discussion of the medical jurisprudence of inebriety, at the December meeting of the Medico-Legal Society of New York, was excellently summed up by Ex-Judge Davis in the two following propositions:[1] "*First*. That if — as all the medical experts there represented concurred in holding — inebriety be a disease, it is the duty of medical men to lead the community at large in the use of proper measures to extirpate the sources of that disease, or reduce them within the narrowest practicable limits, as is already done or attempted in the case of other diseases which afflict the community. *Secondly*. That the law treats inebriety, and must treat it, precisely like any other disease, that is to say, as no excuse for crime. If in a particular case the actual effect of inebriety is shown to be such that there was no criminal intent, — that is to say, no crime, — in such case it is not properly spoken of as an excuse for crime, but as a disproof of the existence of crime."

The "Daily Register"[1] suggests, in connection with expert testimony of medical men in such cases, that a "provision should be made under which all expert testimony of a medical character shall be made independent of the selection of parties, and placed, in respect to impartiality, though not perhaps in respect to controlling authority upon the jury, in a position like that of the Judge."

THE action of slander of title has become more common of late years under the influence of the sharp competition of modern trade. The nature of that action has been decided in the recent English case of *Hatchard* v. *Mege*,[2] which was an action for falsely and maliciously publishing a statement injurious to the plaintiff's trade-mark. The plaintiff died after the commencement of the action; the question arose whether the right of action survived to his personal representatives. It was held that, in so far as the claim was for the libel against the plaintiff, the right of action was put an end to by the plaintiff's death; but in so far as the claim was in the nature of slander of title for maliciously decrying the plaintiff's property and producing special dam-

[1] The "Daily Register," Jan. 5, 1888. [2] 18 Q.B.D. 771.

age to the plaintiff, this was not an action of libel, but was "rather in the nature of an action on the case for maliciously injuring a person in respect of his estate;" and being an action for injury to the plaintiff's property, the right of action survived his death and continued to his personal representatives.

In the somewhat analogous case of *Oakey* v. *Dalton*,[1] an action for the infringement of a trade-mark, it was held that the injury complained of, being an injury not to the deceased plaintiff personally, but to his property in the trade-mark, the maxim *Actio personalis moritur cum persona* did not apply, and the right of action passed to the deceased plaintiff's personal representatives as part of the personal estate.

In the following extracts we present the substance of the recent circular issued by the Council of the Harvard Law School Association: —

"Since the publication of the last circular, in April, 1887, the number of members has increased from 558 to 653. During the year 1886–87 six members have died and three have resigned, making the present membership of the Association 644.

"The Council finds the most valuable and gratifying evidence of the good work done by the Association during the past year, in the increase of the number of students in the Harvard Law School at the opening of the present academic year. The Faculty of the Law School attribute this increase of students in no small degree to the influence of the Association, and the Harvard Law Review of October, 1887, adds its testimony to this gratifying fact. . . . At a meeting of the Council, held November 19, 1887, a committee on the Harvard Law School, for which provision is made in the Constitution, was elected. The following gentlemen comprise this committee for the academic year of 1887–88: Abbott Lawrence Lowell, LL.B., '80, Chairman; Louis D. Brandeis, LL.B., '77; Winthrop H. Wade, LL.B., '84.

"The Council also voted to hold the next Annual Meeting and Dinner of the Association on Tuesday, June 26, 1888, the day before Commencement, at Cambridge. There will be an oration and addresses by eminent lawyers, and the Council will spare no efforts to make this meeting even more successful than the first. . . .

"The Council is anxious to increase still further the membership of the Association. With a list of one thousand members, which is the least the Association ought to contain, there would be a surplus in the Treasury each year, derived from the annual dues alone, which could be most usefully and effectively expended in promoting the objects of the Association.

"All persons receiving this circular are earnestly invited to join the Association, and can do so by sending their names and addresses to the Treasurer, Winthrop H. Wade, Esq., 10 Tremont street, Boston, Mass., and the sum of two dollars in payment of the initiation fee ($1) and the annual due ($1) for 1888.

"The Treasurer has on hand about 250 copies of the Memorial Pamphlet, published by the Association, which he will send to new members as their names are received. This pamphlet contains a full account of the organization and first general meeting of the Association, at

[1] 35 Ch. D. 700.

Cambridge, November 5, 1886, including the oration of Hon. Oliver Wendell Holmes, Jr., and the addresses delivered at the dinner.

"Each member is requested to notify the Treasurer of any change in his address as soon as it occurs; and new members, at the time of joining, are requested to send their names in full, with their home and business addresses. Present addresses of members are wanted, not only for the use of the Association, but also for the new and extensive catalogue of all the former members of the Harvard Law School, now in preparation by the Librarian, Mr. John H. Arnold. This catalogue will be published early in June next, and it is expected that a copy will be sent free to each member of the Association."

In the work of Mr. Finch, Law Lecturer at Queen's College, Cambridge, we recognize an undertaking which inaugurates in England the method of instruction established in this school by Professor Langdell seventeen years ago. Legal education in England may be said to be entering on a fourth stage. At a very early period the Inns of Court seem to have been, in effect, organizations clustering around the professors of the common law at London, maintaining the teaching and practice of the common law against the temporary popularity of the civil law.[1] But, by the end of the sixteenth century, they had lost this character, and up to the first half of the present century systematic legal education in England was stagnant. What was given at the universities does not seem to have had any great value placed upon it. Lord Brougham once said,[2] "I won't say it's a humbug; but it's something very like it. When I was attending lectures on the civil law in Edinburgh, they were all in Latin. A set of Latin questions were proposed after the lecture to the students. Very difficult, indeed, some of them might be to answer, if a proper answer were required; but all we had to do was, if the question commenced with '*Nonne*,' we said '*Etiam;*' and if with '*An*,' we replied '*Non.*'" The office of a practising lawyer was the only place in which the law could be learned, if at all. The eminent authority just mentioned thus sketched the process of legal training in his day: "It is a most melancholy state of things. There is nothing like education for law students now. When I was in the chambers of Mr. (afterwards Chief-Justice) Tindal, we seldom or never saw our master; we were told, 'Copy whatever you can lay hold of,' and with that injunction we were left to ourselves;" and Professor Dicey adds his testimony concerning the state of affairs at the present day: "He is put to make bricks without straw, or rather without having even been taught how bricks are to be made. The oddity of the thing is that he, after all, gets in due time, mainly by the process of imitation, to make pretty tolerable bricks." Towards the end of the half-century an effort began towards a system more helpful and better suited to the dignity of the science of the law. The matter was taken up by the Society for the Amendment of the Law, and was vigorously discussed. A committee of inquiry of the House of Commons was appointed in 1846 to report on the state of legal education; and a commission, including Vice-Chancellor Wood and Sir John

[1] Fortescue, De Laudibus, c. 48–9; Gneist, Eng. Const., i, 393; Foss, Judges, ii, 201, iv, 249; Report of House of Commons Committee on Legal Education, 1846, p. 6; 1 Bl. 23.

[2] 12 Law Rev. 114.

Coleridge, was appointed in 1855 to report on the Inns of Court. Both these bodies recommended the establishment of a University of Law, under the control of the Inns; but the outcome seems to have been not much more than a zealous increase of the number of lectures by the Readers of the Inns. The old system was revivified, not materially altered.

In 1871 (when Professor Langdell's incumbency in this school had but begun) Professor Bryce and Professor Dicey came to the United States and visited several law schools. The Columbia Law School received from them the most favorable comment,[1] at the head of which was (and still is) Professor Dwight, a man of great personal magnetism. The idea of a University of Law was now again mooted by the Society for Legal Education, having at its head Lord Selborne, who carried through in 1873 the measure reforming the judiciary system. The principal material result seems to have been that the readers of the Inns were replaced by professors and tutors, the number being increased. Among these were included, in 1873, such scholars as Amos, Broom, and Hunter, and, in 1886, Pollock, Bryce, and Harrison. An extension, within the last fifteen or twenty years, of the number and scope of the subjects required for the law degree at the larger universities shows the wide workings of this spirit of improvement. In 1883 appeared Professor Dicey's plea for the teaching of English law at the universities. Early in 1885 Mr. Finch visited the Harvard Law School, and by his lectures at Cambridge is now introducing what may fairly be called, according to the "Law Quarterly Review," the method of Professor Langdell. In the fall of 1885 came Professor Pollock, and visited the Harvard Law School, and the impression produced by its method of instruction has been an important influence, as he tells us in the preface to his "Treatise on Torts," not only in his teaching but in his writing also. Whether Professor Dicey follows the case method or not we do not know. Mr. Finch has published a *Selection of Cases on the English Law of Contract, Part I.*, and an inaugural address on *Legal Education, its Aim and Method.* The important features of this fourth stage of legal education in England are (*a*) the radical change in the source of instruction, — for it now begins to be given at universities by scholars holding university professorships, instead of in London by barristers under the auspices of the Inns of Court; (*b*) the adoption of the Langdell method by Mr. Finch, — for though there are strong reasons why it was natural to follow an American method, it seems somewhat noteworthy that the long-tried and thorough methods of legal education in Germany, for instance, should have been passed over, more especially as the genius of the English law student is not suited, according to eminent English authority,[2] to the practice of oral discussion in class.

It should be observed that, long before the present generation, resort was had to the professors of an American law school for suggestions upon legal education. In the legal reform discussions of 1840–56, the names of Professor Greenleaf and Mr. Justice Story were more than once mentioned in connection with the proposed Law University.[3]

[1] See 25 Macmillan's Mag., at 127 and 209.
[2] A.V.D. in 2 L. Q. Rev. 88.
[3] 3 Law Rev. 379; 12 *id.* 379; Report, *supra*, Append. p. 349–50.